85-2100 (2)

APPENDIX F

Docket Number NY07528210052 REM

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD

GERALD GORDON,

Appellant,

v.

VETERANS ADMINISTRATION,

Agency.

DATE: July 11, 1985

Before Herbert E. Ellingwood, Chairman; Maria L. Johnson, Vice Chair; and Dennis M. Devaney, Member.

ORDER

Having considered the appellant's petition for review 1/ of the initial

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[See footnote on following page]

decision issued on June 10, 1982, and the agency's petition for review 2/ of the January 7, 1985, remand initial decision, we find that they do not meet the cri-

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1/ See Risher v. Department of the Army, 10 MSPB 372, 374 (1982) (argument raised for the first time in a petition for review will not be considered, absent a showing that it is based on new and material evidence not previously available despite due diligence); Karapinka v. Department of Energy, 6 MSPB 114 (1981); (a procedural error by a presiding official is of no legal consequence unless it is shown to have adversely affected a party's substantive rights); Douglas v. Veterans Administration, 5 MSPB 313 (1981) (reasonableness of penalty). Cf. Gende v. Department of Justice, 23 MSPR 604 (1984) (partial retroactive effect of 5 U.S.C. Chapter 43 on performance-based Chapter 75 actions).

2/ Contrary to the agency's contention, the voluntariness of appellant's resignation need not be measured solely against a test requiring duress or coercion. There is no requirement that an employee be intentionally deceived about his options. See Covington v. Department of Health and Human Services, 750 F.2d 937, 942 (Fed. Cir. 1984). See also Scharf v. Department of the Air Force, 710 F.2d 1572, 1575 (Fed. Cir. 1983) (retirement action involuntary if agency made misleading statements on which the employee reasonably relied upon to his detriment.

teria for review set forth at 5 C.F.R. §1201.115. Accordingly, the Board hereby DENIES the petitions.

This is the final order of the Merit Systems Protection Board in this appeal. The decisions shall become final five (5) days from the date of this order. 5 C.F.R. §1201.113(b).

The appellant is hereby notified of the right under 5 U.S.C. §7703 to seek judicial review, if the court has jurisdiction, of the Board's action by filing a petition for review in the United States Court of Appeals for the Federal Circuit, 717 Madison Place, N.W., Washington, D.C. 20439. The petition for judicial review must be received by the

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court no later than thirty (30) days after the appellant's receipt of this order.

FOR THE BOARD:

/S/ Robert E. Taylor
Robert E. Taylor
Clerk of the Board

Washington, D.C.